



REPUBLIC OF KENYA



Mwaniki v Strathmore Research and Consultancy Centre Limited (Cause 2149 of 2016) [2024] KEELRC 93 (KLR) (31 January 2024) (Judgment)

Neutral citation: [2024] KEELRC 93 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2149 OF 2016
J RIKA, J
JANUARY 31, 2024**

BETWEEN

EASTER DOREEN WANGERWE MWANIKI CLAIMANT

AND

**STRATHMORE RESEARCH AND CONSULTANCY CENTRE
LIMITED RESPONDENT**

JUDGMENT

1. The Claimant filed her Statement of Claim on 18th October 2016.
2. She avers that she was employed by the Respondent on 26th January 2016, as a Marketing Assistant. The contract was for a period of 2 years. She was paid a basic salary of Kshs. 40,000 and house allowance of Kshs. 10,000, total Kshs. 50,000 monthly.
3. By a letter dated 18th August 2016, delivered to the Claimant on 22nd August 2016, the Respondent purported to terminate the Claimant's contract, effective 22nd July 2016. The letter indicated that the Claimant's probationary period had expired.
4. Another letter of termination issued on 29th August 2016. It clarified that termination was effective from 29th August 2016.
5. The Claimant avers that termination on both instances was unfair and unlawful.
6. Her probation ended on 22nd July 2016. She continued working. She was not told that probation was unsatisfactory. She considered her contract to have been confirmed, and expected to serve, for the contracted period of 2 years. She expected to be heard, and to be given valid reason, to justify termination. Her performance was not appraised preceding termination.
7. She prays for Judgment against the Respondent for: -



- a. 1-month salary in lieu of notice at Kshs. 50,000.
 - b. August 2016 salary at Kshs. 50,000.
 - c. Salary for the period September 2016 to January 2018 [17 months] at Kshs. 850,000.
 - d. Meal benefit for September 2016 to January 2018 at Kshs. 68,000.
 - e. Provident Fund benefits contributed for 6 months at Kshs. 28,800.
Total... Kshs. 1,046,800.
 - f. Leave pay for the period 22nd January 2016 to 29th August 2016.
 - g. Costs.
 - h. Interest.
 - i. Certificate of Service.
 - j. Any other suitable relief.
8. The Respondent filed its Statement of Response on 30th March 2017. It is conceded that the Respondent employed the Claimant as a Marketing Assistant, for 2 years, beginning 22nd January 2016.
 9. The first 6 months were probationary. Her performance was substandard. She filled her evaluation form on 3rd August 2016. The Respondent held a meeting with her on 9th August 2016, where her performance was discussed. She was advised by her Supervisor that her contract would not be renewed.
 10. Among the reasons for non-confirmation were: she attended SPSS course held between 11th April 2016 to 15th April 2016, without approval of her supervisor; she attended course on finance for non-finance managers between 16th August 2016 and 19th August 2016; it was not part of her role to attend seminars; she frequently requested for off-duty days, which affected her probationary service; she was involved in acts of insubordination; and she failed to show enthusiasm and willingness to work. She incurred course fees at Kshs. 67,860, which she undertook to refund the Respondent.
 11. Evaluation at the end of probation took about 3 weeks. She was informed after evaluation, that she was not successful on probation. The Respondent denies that the contract was confirmed after 22nd July 2016. The Claimant was aware that her contract had not been confirmed. She was supposed to clear. She did not. She still holds the Respondent's staff identification tag, office keys, office drawer and cabinet keys.
 12. The change on the effective date of termination, was out of Respondent's goodwill. The Respondent intended to give the Claimant ample time, for evaluation and clearance. She was paid all her dues on lapse of her probationary contract.
 13. The Respondent prays that the Claim is dismissed with costs; the Claimant is ordered to pay the course fees at Kshs. 67,860 to the Respondent; and she is ordered to return Respondent's property including staff identification tag, office keys, and door keys.
 14. The Claimant, and Dr. Freshia Weru, a Senior Lecturer at the Respondent, gave evidence for the respective Parties on 25th July 2023, closing the hearing. The Claim was last mentioned before the Court on 11th October 2023, when Parties confirmed filing and exchange of their closing submissions.
 15. The Claimant adopted her witness statement and 6 documents on record, in her evidence-in-chief. Cross-examined, she confirmed that the first 6 months were probationary. Confirmation depended



on satisfactory performance. She was aware of the half year report, exhibited by the Respondent. There was a target for her to train 10-15 participants. She did not recall ever training this number of participants. Records on participation show an average of 6 participants. The Claimant conceded she attended a course for non-finance staff. Page 16 of the Respondent's documents indicate that she was a facilitator. She was in the room by default. She was meant to be a participant. She was made aware that she would be required to pay for the course. She attended without authorization. She did not refund the Respondent. She was not entitled to annual leave during probation. She filled evaluation form after time had lapsed. She received letters of termination. She did not clear with the Respondent. Redirected, the Claimant told the Court that she did not keep the appraisal records. She did not recall if she conceded that her performance was substandard.

16. Dr. Freshia Weru similarly adopted her witness statement and 10 documents filed by the Respondent, in her evidence-in-chief. She was the Claimant's immediate supervisor. She confirmed details of the Claimant's contract with the Respondent. The first 6 months were probationary. Confirmation depended on satisfactory performance. The Claimant would self-evaluate. She would be evaluated also, by her supervisor. The process took approximately 3 weeks.
17. The Claimant's last day of probation was 22nd July 2016. She submitted her evaluation forms about a week late. Dr. Freshia did her evaluation bit carefully, and informed the Claimant that her contract would not be renewed. There was a lengthy discussion between the supervisor and her supervisee. She was advised she could try alternative employment in another department. Dr. Freshia consulted the Human Resource Department upon evaluation. The Claimant had been given a target of 10-15 participants for short course training. She did not meet the target. She attended a course on software analysis without permission. She attended another course while she was supposed to be marketing. She agreed to refund the cost, which she did not.
18. Cross-examined, Dr. Freshia told the Court that the Claimant alleged she attended the course by default. She attended as a participant and asked for an attendance certificate. The Claimant did not meet the targets. She was advised by Dr. Freshia to try her luck in other departments. 6 months of probation ended around 22nd July 2016. The Respondent did not pay notice, because the Claimant did not sign her termination letter. Evaluation forms were available from the Respondent's webpage. She filled the forms on 3rd August 2016. The first letter of termination was on 18th August 2016, the second on 29th August 2016. The self-evaluation forms were always available.
19. The issues are whether the Claimant's contract was terminated lawfully and fairly; whether she merits the remedies pleaded; and whether the counterclaim by the Respondent, in the sum of Kshs. 67,860 is merited.

The Court Finds:

20. The Claimant was employed by the Respondent as a Marketing Assistant for short courses program. Her contract was to run from 22nd January 2016. The contract was for 2 years. The initial 6 months were probationary. She was entitled to a monthly basic salary of Kshs. 40,000, house allowance of Kshs. 10,000 and meal benefit of Kshs. 4,000 monthly at the Respondent's cafeteria.
21. It was a term of the contract that the Claimant would serve a probationary period of 6 months, and "your appointment will be confirmed depending on performance..."
22. The Claimant conceded on cross-examination that she was late in filing her performance evaluation form. She filled the form after her probationary period had expired.



23. The Court does not think that she was justified therefore, in using her own default on filling the evaluation form, to found the argument that she considered her contract to have been confirmed, after 22nd July 2016.
24. 3 weeks taken by the Respondent, to afford the Claimant more time to evaluate and clear with the Respondent, cannot be taken against the Respondent. The Claimant was responsible for delay on self – evaluation, and the Respondent accommodated her, evaluating her beyond the date of probation. The self-evaluation form was always available on the Respondent’s webpage, and the Claimant was aware that she was required to self-evaluate, to enable the Respondent consider, upon its own complementary performance appraisal, whether her contract should be confirmed.
25. The brief extension of the probationary period was confined to performance appraisal and clearance, and was not a confirmatory extension. The Claimant acquiesced to the brief extension, by her late initiation of self-evaluation.
26. There is no foundation to the prayer for notice, anticipatory salaries, and allowances. The Claimant did not work for 2 years as anticipated. She did not complete her probation successfully. She was never confirmed. She was not entitled to annual leave while on probation. She told the Court on cross-examination, “I was not entitled to leave for the 6 months of probation...”
27. She did not supply the Court with her pay slips, showing that Kshs. 28,800 was deducted from her salary over a period of 6 months as her contribution to the Provident Fund. On record is only a pay slip for the month of June 2016, showing a deduction of Kshs 2,400. The prayer for refund of Kshs. 28,800 has not been established.
28. There is no evidence that the Claimant worked the whole of August 2016, and the claim for salary of Kshs. 50,000 for the month of August 2016, is not well-founded. She was offered terminal dues to the end of her contract, through the letter of termination dated 18th August 2016.
29. The Claimant was entitled to eat at the Respondent’s cafeteria, at a cost of Kshs. 4,000 monthly, for the life of the contract. It would be absurd to allow her to continue eating at the Respondent’s cafeteria for the remaining period in her 2-year contract, or to pay her the anticipated meal allowance, while she is no longer an Employee of the Respondent.
30. The Claimant conceded on cross-examination that there were valid grounds justifying termination of her probationary contract.
31. She had a target of training 10-15 participants. She did not meet the target. She told the Court that on most occasions, she managed a paltry 6 participants. She attended a course for non-finance managers, and claimed she attended by default. She conceded she attended training without the authorisation of the Respondent. She agreed she would refund the costs of the training to the Respondent. She never did. Even had the Claimant’s contract been confirmed, these were adequately valid grounds to justify termination of employment.
32. In the end the Court finds no merit in the Claim. The counterclaim was conceded in the evidence of the Claimant. She told the Court that, “I was made aware I would be required to pay for the course I attended without authorisation. I have not paid.” Her indebtedness to the Respondent is also documented in her e-mail to Dr. Freshia, dated 15th August 2016. She states that she had decided to repay the cost of the training to the Respondent, in instalments. She did not repay. She does not dispute the amount claimed as cost of the training, at Kshs. 67,860.



33. Dr. Freshia did not give details of the items belonging to the Respondent, allegedly retained by the Claimant and the Court is not in a position to order the Claimant to return these items.

It Is Ordered: -

- a. The Claim is declined.
- b. The Claimant shall pay to the Respondent the sum of Kshs. 67,860 in refund of the cost of training.
- c. No order on the costs and interest.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 31ST DAY OF JANUARY 2024.

JAMES RIKA

JUDGE

